

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.6808 of 2015 (O&M)
Date of Decision.22.11.2018

Jaswinder Kaur and anotherPetitioners
Vs

Makhan Singh (since deceased) and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravish Bansal, Advocate
for the petitioners.

Mr. G.L. Bajaj, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision is directed against the impugned order 08.09.2015 whereby the application of the petitioner-defendants No.5 and 6 seeking following amendment in para 3 & 4 of the written statement has been dismissed:-

“The true facts are that Ram Singh s/o Chanan Singh r/o Mohalla Khokhran was owner of residential house measuring 1 kanal bearing evacuee No.K-83 and Municipal No.B-1/339. Said Ram Singh was also known as Prem Singh. In the record, somewhere he is recorded as Ram Singh and somewhere he is recorded as Prem Singh. Said Ram Singh @ Prem Singh has died. He has left behind him two sons namely Makhan Singh plaintiff and Kharak Singh @Kharku Singh, who was predecessor in interest of the defendants No.1 to 4 and Sai Dass. He has no daughter at all. After the death of Ram Singh, the house was partitioned between plaintiff Makhan Singh and heirs of Kharak Singh @ Kharku Singh. Earlier, the plaintiff Makhan Singh along with Sai Dass s/o Kharak Singh had filed civil suit

No.82 of 07.04.2000 against Sukhdev Singh s/o Jeet Singh. In said suit, it was described as Makhan Singh and Kharak Singh were the heirs of Ram Singh, but in that suit, it was wrongly described as Prem Singh s/o Ram Singh. However, plaintiff Makhan Singh himself admitted in that suit that plaintiff Makhan Singh along with Kharak Singh inherited the estate of Ram Singh. Now the plaintiff is stopped to plead that Kharak Singh had no right or interest in the suit property.”

AND

To add the following lines after existing para No.4 of the written statement:-

Ram Singh deceased had no daughter. The plaintiffs No.2 & 3 are not the daughters of Ram Singh and have no right or interest in the suit property.”

Mr. Ravish Bansal, learned counsel appearing on behalf of the petitioners submitted that the respondent-plaintiff instituted the suit challenging the sale deed dated 11.11.2002 executed by defendant No.1 to 4 in favour of the petitioners.

The aforementioned suit was decreed and appeal was filed on behalf of the petitioners-defendants No.5 and 6. In the appeal, one of the ground taken was that some original co-owners were not impleaded in the suit and therefore, decree of the trial Court was not sustainable as the same was passed behind their back. Even an application under Order 1 Rule 10 CPC was also filed by them. While allowing the aforementioned request, the lower Appellate Court remitted the matter to the trial Court in the following manner:-

“9. I have also considered the submissions of learned counsel for the applicants that the judgment and decree dated 13.05.2013 may be set aside for non-joinder of

necessary parties. I find that when Sai Dass through his legal representatives, has been allowed to be impleaded as party, but no opportunity has been given to the L.Rs of Sai Dass i.e. Balbir Kaur and minor kids to proceed further. So, accordingly the judgment of the lower court dated 13.5.2013 is not binding upon the newly impleaded defendants and therefore, the same is set aside and the learned lower court is directed to pass afresh judgment, after impleading the applicants Balbir Kaur, Soni Rani and Gurnam Singh minors, as defendants and after affording appropriate opportunities to them as per law to file written statement and then replication, if any and if any new issue arises, then the same be framed and thereafter appropriate opportunities as per law be given to the respondent-plaintiffs to lead evidence against the newly added defendants and then newly added defendants be also allowed to lead evidence and thereafter decide the matter afresh after hearing the parties through their counsel. Copy of this order be pleaded on the lower Court file and the same be sent to the court of Dr. Rajneesh, PCS, Addl. Civil Judge (Senior Division), Faridkot. Parties through their counsel are directed to appear before the lower court on 23.12.2014. The appeal file be consigned to the record room.”

Therefore, amendment sought in view of the remand order did not change and alter the defence and no prejudice would be caused to the respondents-plaintiffs.

Mr. Bajaj, learned counsel appearing on behalf of the respondents-plaintiffs submitted that the order of the lower Appellate Court was restricted to the newly added respondents by giving liberty to hear. In these circumstances, petitioners/defendants No.5 and 6

herein could not seek amendment of the written statement.

I am afraid aforementioned argument of Mr. G.L. Bajaj is not sustainable, for, no restriction was imposed upon petitioners-defendants No.5 and 6 to seek amendment. As the opportunity has been given on impleadment of the co-sharers to lead evidence and rebuttal to the plaintiffs, amendment sought in the written statement would help the Court for effective adjudication. In my view, no harm and prejudice would be caused to the respondents-plaintiffs as they would be at liberty to take all possible objections.

In view of the aforementioned observations, the impugned order is set aside and the revision petition is allowed.

At this stage, Mr. Bansal does not press challenge to the impugned order (Annexure P-4), thus, the same is upheld.

(AMIT RAWAL)
JUDGE

November 22, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No